PRIVY COUNCIL APPEALS

DIRECTOR-GENERAL OF INLAND REVENUE v. E.D.C.

[Federal Court Civil Appeal No. 57 of 1973]

The Privy Council decided on January 11, 1977 that no Order should be made on the above appeal ([1974] 2 M.L.J. 65) as the parties have agreed as to the liability of the respondent for income tax for the year of assessment 1969.

No Order made.

GENERAL MANAGER, KERETAPI TANAH MELAYU v. VEERIAH

[Federal Court Civil Appeal No. 21 of 1974]

The Appeal to His Majesty the Yang di-Pertuan Agong by the appellant in the above Appeal ([1975] 1 M.L.J. 123) has been withdrawn on October 14, 1977 and no Order as to costs has been made by the Privy Council.

Appeal withdrawn.

HENG CHENG SWEE v. BANGKOK BANK LTD.

[Federal Court Appeal No. 34 of 1975]

The Appeal to His Majesty the Yang di-Pertuan Agong by the appellant in the above Appeal ([1975] 1 M.L.J. 267) has been withdrawn and by virtue of Rule 32 of the Judicial Committee Rules, 1957 the said Appeal stands dismissed as from January 11, 1978 without further Order from the Privy Council.

Appeal dismissed.

KATHIRAVALUPILLAI v. GOVERNMENT OF MALAYSIA

[Federal Court Civil Appeal No. 118 of 1975]

The appellant's petition for special leave to appeal *in forma pauperis* to His Majesty the Yang di-Pertuan Agong in the above matter ([1976] 2 M.L.J. 114) was dismissed by the Privy Council on December 12, 1977.

Petition dismissed.

TEH BEE v. K. MARUTHAMUTHU

[Federal Court Civil Appeal No. 163 of 1975]

The respondent's petition for special leave to appeal *in forma pauperis* to His Majesty the Yang di-Pertuan Agong in the above matter ([1977] 2 M.L.J. 7) was dismissed by the Privy Council on December 12, 1977.

Petition dismissed.

A PRIVY COUNCIL REPORT

T. MAHESAN v. MALAYSIAN GOVERNMENT OFFICERS' CO-OPERATIVE HOUSING SOCIETY

[P.C. (Lord Diplock, Lord Edmund-Davies and Lord Scarman) October 4 and November 28, 1977]

[Privy Council Appeal No. 17 of 1974]

Contract — Agency — Secret commission, bribe and compensation — Agent inducing principal to enter into contract with person who paid bribe — Agent causing loss to principal — Recovery by principal of bribe and damages for loss — Need for election.

Agency — Bribed agent — Recovery by principal of bribe and damages for loss.

Tort — Fraud — Principal and agent — Agent accepting bribe and inducing principal to enter into contract with person who paid bribe — Agent causing loss to principal — Claim by principal to recover bribe and damages for the loss sustained by the principal — Necessity for election — Prevention of Corruption Act, 1961, s. 30.

Practice and Procedure — Appeal to Privy Council — Concurrent findings of fact.

This was an appeal against the decision of the Federal Court reported at [1975] 1 M.L.J. 77.

In this case the appellant was the director and secretary of the respondent co-operative society. In connection with a transaction involving the purchase of land in Penang from one Manickam, the appellant received from him a bribe amounting to $122,000. Shortly before this the appellant and Manickam had inspected the land together. The appellant had found it to be suitable for the respondent society's purposes and Manickam had purchased it from its former owners at the price of $456,000. He resold it to the respondent society for $944,000, thus realising a gross profit of $488,000, one quarter of which he passed on to the appellant. Between the purchase and the resale expenses amounting to $45,000 had been incurred by Manickam in removing squatters from the land; so the nett profit that was made out of the respondent society was $443,000. This represented the loss to the respondent society as a consequence of the appellant's fraudulent breach of duty in failing to inform his employers that the land was available at the price of $456,000 and in conniving with Manickam in the purchase of it by the latter and his resale of it to the respondent society at more than double the price he had paid. The appellant was subsequently convicted under section 4(a) of the Prevention of Corruption Act, 1961 and sentenced to seven years' imprisonment and ordered to pay to the respondent society a penalty of $122,000, being the amount of the bribe. The respondent society then brought an action against the appellant claiming (a) recovery of the bribe the appellant had received, that is, $122,000 and (b) damages for loss sustained by the respondent society in connection with the purchase of the land quantified at $488,000.

In the High Court judgment was given in favour of the respondent society for $122,000 together with interest but the claim for damages was dismissed as the learned judge found that the respondent society had failed to prove that they had sustained any loss in the transaction. On appeal to the Federal Court, the Federal Court upheld the learned judge's findings on the first claim and they also gave judgment for the respondent society for $443,000 that is $488,000 less the $45,000 spent for evicting squatters, as damages for the loss sustained by them. The appellant appealed from the judgment of the Federal Court.

Held: (1) there were concurrent findings of fact in this case and the Privy Council, in accordance with their well-established practice, would not interfere with those findings;

(2) under the Common Law a plaintiff has alternative remedies against the briber and the agent bribed (a) for the money had and received under which he can recover the amount of the bribe as money had and received or (b) for damages for fraud under which he can recover the amount of the actual loss sustained in consequence of his entering into the transaction in respect of which the bribe was given, but he cannot recover both;